

Questions and Answers Regarding Language Access in the Courts

On September 11, 2013, the Michigan Supreme Court approved, with immediate effect, MCR 1.111, MCR 8.127, and Administrative Order 2013-8 addressing language access issues in Michigan courts. MCR 1.111 establishes requirements for all courts to provide court-appointed foreign language interpreters for LEP persons. MCR 8.127 creates a board to recommend interpreter certification requirements and to review complaints against interpreters. Administrative Order 2013-8 requires each court to adopt a language access plan as a local administrative order within 90 days (by December 11, 2013).

The following questions and answers provide information regarding the new rules and administrative order.

MCR 1.111: COURTROOM LANGUAGE ACCESS PROCEDURES

Q: I have a hearing tomorrow and I need an interpreter. What does the court rule require a judge/referee/magistrate to do?

A: Judicial officers must immediately begin using certified interpreters for limited English proficient (LEP) witnesses and parties for any case or court proceeding. If a *certified* interpreter is not reasonably available, the court must consider the nature and gravity of the proceeding, and whether to postpone the hearing until a certified interpreter is available. The court may then determine to proceed with a qualified interpreter. See MCR 1.111(F)(1).

If a *qualified* interpreter is not reasonably available, the court must consider the nature and gravity of the proceeding, and whether to postpone the hearing. The court may determine to proceed with a noncertified and nonqualified interpreter if the court determines through *voir dire* that the individual is capable of conveying the intent and content of the speaker's words sufficiently to allow the court to conduct the proceeding, without prejudice, to the limited English proficient person. See MCR 1.111(F)(2).

Q: Who is a party?

A: The court rule defines a party as "a person named as a party or a person with legal decision-making authority in the case or court proceeding." See MCR 1.111(A)(2). For example, this would include a parent in a juvenile action.

Q: For purposes of this rule, what is a case or court proceeding?

A: The court rule defines a case or court proceeding as "any hearing, trial, or other appearance before any court in this state in an action, appeal, or other proceeding, including any matter conducted by a judge, magistrate, referee, or other hearing officer." See MCR 1.111(A)(1).

Q: Is there a list of certified interpreters?

A: Yes. <http://courts.mi.gov/administration/scao/officesprograms/fli/pages/certified-court-interpreters.aspx>. Michigan currently has over 60 certified interpreters in the following languages: Arabic, French, Japanese, Mandarin, Polish, Russian, and Spanish.

Q: Is there a list of qualified interpreters?

A: SCAO published a list of people who meet the SCAO requirement of having passed the written examination testing English comprehension and knowledge of general courtroom procedure. The list is located at: <http://courts.mi.gov/administration/scao/officesprograms/fli/pages/certified-court-interpreters.aspx>. The court may consider these individuals as qualified interpreters if it determines through *voir dire* that they are capable of interpreting the proceeding at hand.

Q: Who pays for the interpreter?

A: The court rule requires that court-appointed interpreter costs are to be paid out of funds provided by law or by the court. See MCR 1.111(F)(4). Currently, each court is responsible for these costs.

Q: Can the hearing officer assess costs?

A: Yes. If a party is financially able to pay for interpreter costs, the court may order the party to reimburse the court for payment of interpretation costs.

Q: For purposes of this rule, who is “financially able to pay”?

A: A person whose family or household income is more than 125 percent of the federal poverty level may be assessed interpreter costs at the conclusion of the litigation only if the assessment would not unreasonably impede the person’s ability to defend or pursue the claims involved in the matter. See MCR 1.111(A)(4) and (F)(5).

Q: What questions should I ask on voir dire to qualify a court interpreter?

A: A list of sample questions will be located on SCAO’s website.

Q: Can I use a bilingual court employee as a court interpreter?

A: You can use a bilingual court employee as an interpreter for minor issues outside the courtroom. You can also use a bilingual court employee as an interpreter for minor matters such as advising a party of an adjournment. You should only use a court employee as an interpreter in a case if the employee is employed by the court as an interpreter and not in another capacity or if only a court employee qualifies under the court rule when no other options are available.

Q: Can I use a family member as an interpreter?

A: A family member should not be used as an interpreter, except to advise a party of an adjourned date (if the family member does not have an adverse interest).

ADMINISTRATIVE ORDER

Q: How does Administrative Order 2013-8 differ from MCR 1.111?

A: The court rule determines what must happen in the *courtroom*, while the administrative order requires the trial courts to establish the protocol for the *courthouse*. The administrative order allows the trial courts to identify local needs and resources and document them in a language access plan to assist court staff in providing language access services to LEP persons.

Q: What do I need to do with the model LAO?

A: By December 11, 2013, the local court must fill out and submit the model LAO for its language access plan to SCAO for approval. Most courts already have plans for how they address the needs of LEP persons. The LAO is merely a means of formally stating the plans in writing. SCAO will offer WebEx conference calls to provide information on completing the model, and to allow trial court administrators to share ideas and resources to improve their ability to address LEP needs.

Q: The model LAO says that SCAO will provide census information for my court. Where can I find that information?

A: SCAO gathered census data from the American Community Survey (ACS), which is associated with the U.S. Census Bureau. ACS surveys people for demographic information. The survey allows the individual to self-report speaking English “less than very well,” and identify the language the individual does speak. ACS gathers this information, and uses it to estimate the entire population. SCAO used county- and city-level estimates to identify individuals who self-reported speaking English “less than very well” by each court’s jurisdiction.

SCAO created a spreadsheet identifying the total population, the limited English proficient population, and the estimated number of people speaking a given language. This spreadsheet is located at:

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/Documents/access/DetailedCensusData.xls>. Municipal courts are identified on the district court tab.

Q: Can local courts collaborate when filling out a language access plan?

A: Yes, definitely. SCAO is establishing several different WebEx remote conference sessions for courts. Each session will allow the courts on the call to share resource ideas and suggest implementation strategies. SCAO will work with the

regional offices to determine the best times and registration processes for these WebEx calls.

GENERAL QUESTIONS

Q: How was the proposed rule introduced?

A: SCAO solicited nominations from the judicial associations of names for representatives to serve on a language access workgroup. These individuals participated in making recommendations to the Court and were asked to communicate progress to their organizations. The draft rule was published for comment in May of 2012. At that time, committee members presented at association meetings on the proposed court rule and the model administrative order. All judicial associations commented on, and supported, a version of the drafted rule. SCAO offered a session on language access at the Judicial Conference in Dearborn in September 2012.

Q: How will court orders be translated?

A: If an interpreter is appointed for a hearing, the interpreter should be prepared to translate any interim or final order from the court. This can be done through sight translation (where the interpreter reads the English order into the target language), or through handwritten translation (where the interpreter translates the English form, in writing, to the target language). MCR 2.602 requires that orders be issued in writing. Courts should address how written orders from the court will be translated in their language access plan.

Q: How will my staff know which language a person speaks?

A: Courts can print and use “I speak” cards from the internet at: <http://www.lep.gov/ISpeakCards2004.pdf>. The individual can check the box next to his or her language so that court staff will know what language to interpret.

Q: Who is the SCAO contact for any questions?

A: All e-mailed questions can be sent to the Language Access e-mail address at: LanguageAccess@courts.mi.gov. Questions on the court rules, the local administrative order, or any other aspect of implementation can be directed to Daniel Bauer at bauerd@courts.mi.gov, or 517-373-2167.

Q: How can I get additional information regarding language access issues?

A: On Friday, September 13, 2013, judicial officers and court staff can dial into one of three teleconference calls, at either 9 a.m., noon, or 2 p.m. Each call will begin with a 15-minute summary of the court rule and the language access plan requirements. The balance of the hour will allow time for a question and answer session to address questions that haven’t been answered through other communications.

The dial-in number is 1-866-537-1633. When prompted for a passcode, enter 9262753.

Q: When do interpreters need to register with SCAO?

A: Registration will be required with the fiscal year beginning October 1, 2014. Interpreters who provide services for courts who are not certified by SCAO and courts who use them should contact SCAO to ensure that they receive notices concerning interpreting information from SCAO.

Q: I want to become a certified interpreter. What do I do?

A: Information on becoming an interpreter, including the process and future test dates, is available online at:
<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FLI/Pages/default.aspx>.